

MAIL TO:

STATE OF UTAH
DIVISION OF PURCHASING
3150 STATE OFFICE BUILDING, CAPITOL HILL
P.O. BOX 141061
SALT LAKE CITY, UTAH 84114-1061
TELEPHONE (801) 538-3026
<http://www.purchasing.state.ut.us>

Invitation to BidSolicitation Number: **GM3903**Due Date: **11/05/02 at 2:00 P.M.**

Date Sent: October 21, 2002

Statewide ContractGoods and services to be purchased: **ORACLE PRODUCTS FROM AN ORACLE DIRECT RESELLER****Please complete**

Company Name		Federal Tax Identification Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)	Email Address	
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)		Days Required for Delivery After Receipt of Order (see attached for any required minimums)	
Brand/Trade Name		Price Guarantee Period (see attached specifications for any required minimums)	
Minimum Order		Company's Internet Web Address	
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes____ No____. If no, enter where produced, etc._____</p>			
Offeror's Authorized Representative's Signature		Print or type name and title	Date
State of Utah Division of Purchasing Approval Douglas G. Richins, Director		Date	Contract Number

**STATE OF UTAH
DIVISION OF PURCHASING**

Invitation to Bid

Solicitation Number: GM3903

Due Date: 11/05/02

Vendor Name:

Description	Unit Price	Extension
<p>THE STATE OF UTAH IS SOLICITING BIDS FOR AN AUTHORIZED DIRECT RESELLER(S) OF ORACLE PRODUCTS AND SERVICES TO BID ON ORACLE PRODUCT PURCHASES THAT HAVE AN AGGREGATE ORDER AMOUNT OF LESS THAN \$250,000.00 (MSRP). THE SPECIFICATIONS ARE ATTACHED.</p> <p>THE AWARD OF THE CONTRACT(S) WILL RESULT IN A STATEWIDE CONTRACT FOR USAGE BY STATE AGENCIES. CITIES, COUNTIES, EDUCATIONAL ENTITIES AND OTHER POLITICAL SUBDIVISIONS MAY PURCHASE FROM THE RESULTING CONTRACT. THE AWARD WILL ALSO RESULT IN A 1 YEAR CONTRACT WITH 4 OPTIONS TO RENEW FOR A PERIOD OF 1 YEAR EACH.</p> <p>WRITTEN TECHNICAL QUESTIONS SHOULD BE DIRECTED TO THE DIVISION OF INFORMATION TECHNOLOGY SERVICES (ITS) ASSISTANT DIRECTOR, BOB WOOLLEY, AT FACSIMILE (801) 538-3622. WRITTEN QUESTIONS ARE DUE BY CLOSE OF BUSINESS ON FRIDAY, OCTOBER 25, 2002. QUESTIONS RELATED TO THE PROCUREMENT PROCESS SHOULD BE DIRECTED TO THE PURCHASING AGENT, GLENDON MITCHELL, AT (801) 538-3138.</p>	\$	\$

INVITATION TO BID - INSTRUCTION AND GENERAL PROVISIONS

1. **BID PREPARATION:** (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. (c) Unit price will govern, if there is an error in the extension. (d) Delivery time is critical and must be adhered to as bid. (e) Wherever in this document an item is defined by using a trade name of a manufacturer and/or model number, it is intended that the words, "or approved equal" apply. "Or approved equal" means any other brand that is equal in use, quality, economy and performance to the brand listed as determined by the Division of Purchasing & General Services (DIVISION). If the bidder lists a trade name and/or catalog number in the bid, the DIVISION will assume the item meets the specifications unless the bid clearly states it is an alternate, and describes specifically how it differs from the item specified. **MULTIPLE OR ALTERNATE BIDS WILL NOT BE ACCEPTED UNLESS SO STATED IN THE SPECIFICATIONS.** (f) By signing the bid the bidder certifies that all of the information provided is accurate, and that prices bid are correct. (g) This bid may not be withdrawn for a period of 60 days from bid due date.

2. **SUBMITTING THE BID:** (a) The bid must be signed in ink, sealed in a properly-addressed envelope, and either mailed or delivered to the DIVISION OF PURCHASING, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061 by the "Due Date and Time." **The "Bid Number" and "Due Date" must appear on the outside of the envelope.** (b) Bids, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section R33-3-109. (c) **Your bid will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of bids to DIVISION will not be considered.** (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the bid for consideration and approval by the DIVISION. Upon award of the contract, the shipping terms will be F.O.B. Destination, Freight Prepaid with freight charges to be added to the invoice unless otherwise specified by the DIVISION. (e) All State purchases are subject to the Utah Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33).

3. **FAILURE TO BID:** Failure to respond may result in the removal of your firm from the bidder's list for the commodity(s) listed, unless you advise DIVISION in writing prior to due date that you desire to receive future invitations to bid on this commodity(s). **Three consecutive no responses will automatically result in removal.**

4. **PROPRIETARY INFORMATION:** Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for nondisclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any bid will not be considered proprietary. Bids submitted may be reviewed and evaluated by any persons at the discretion of the state.

5. **BONDS:** The state has the right to require a bid bond, payment bond and/or a faithful performance bond from the bidder in an amount not to exceed the amount of the contract.

6. **SAMPLES:** Samples of item(s) specified in this bid, when required by DIVISION, must be furnished free of charge to DIVISION. Any item not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the bidder's expense.

7. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and

mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

8. **DIVISION APPROVAL:** Purchase orders placed, or contracts written, with the state of Utah, as a result of this bid, will not be legally binding without the written approval of the director of the DIVISION.

9. **AWARD OF CONTRACT:** (a) the contract will be awarded with reasonable promptness, by written notice, to the lowest responsible bidder that meets the specifications. Consideration will be given to the quality of the product(s) to be supplied, conformity to the specifications, the purpose for which required, delivery time required, discount terms and other criteria set forth in this invitation to bid. (b) The bids are opened publicly in the presence of one or more witnesses. the name of each bidder, and the amount of the bid is recorded. Each bid, and the record, is open to public inspection. (c) The DIVISION may accept any item or group of items, or overall low bid. the DIVISION has the right to cancel this invitation to bid at any time prior to the award of contract. (d) The DIVISION can reject any and all bids. And it can waive any informality, or technicality in any bid received, if the DIVISION believes it would serve the best interest of the State. (e) Before, or after, the award of a contract the DIVISION has the right to inspect the bidder's premises and all business records to determine the holder's ability to meet contract requirements. (f) DIVISION does not guarantee to make any purchase under awarded contract(s). Estimated quantities are for bidding purposes only, and not to be interpreted as a guarantee to purchase any amount. (g) Utah has a reciprocal preference law which will to be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56 20.5 -20.6, Utah Code Annotated.

10. **ANTI-DISCRIMINATION ACT:** The bidder agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also bidder agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

revision date: 2/14/2000

Invitation To Bid
Bid Number: GM3903
Oracle Products
Aggregate Orders Less Than \$250,000

Description

This invitation to bid (ITB) will allow resellers of Oracle products and services to bid on Oracle product purchases that have an aggregate order amount of less than \$250,000 (MSRP) that are commonly procured by the State of Utah (hereafter referred to as State). The State currently has a contract in place for aggregate purchases totaling more than \$250,000 MSRP. No alternate manufacturers will be considered for this bid. Oracle authorized direct resellers may submit pricing discount bids. The discounts offered will establish reseller pricing for all similar products to the State per the then current Oracle price list. If discounts for specific product families or categories differ, the respondent should note the appropriate price to the State for each category.

As the designated Oracle supplier, the State expects the selected respondent to provide rapid product delivery at consistent discount levels. The scope of the awarded contracts will include software, product/update support, educational and training services. If special pricing is offered to educational/academic users, that discount shall be included as listed in the bid document.

Mandatory—General Requirements

Resellers responding to this section must provide an affirmative response or provide the information requested for all general requirement items. Failure to provide a response to any of these items, or an exception, may be deemed to constitute a non-compliant bid response. If an exception is taken, the position should be clearly articulated on an attached page that references the item by number.

1. Respondents must indicate their acceptance of the State of Utah Standard Terms and Conditions. If the respondent elects to disagree with a standard term and/or condition, they must provide documentation stating their reason for the disagreement, and clarify their position. Any disagreement with the State of Utah's Standard Terms and Conditions may result in rejection of a bid. Comply _____ Exception _____
2. Respondents must provide their Standard Terms and Conditions, along with any contract forms, which must be signed, prior to completion of the contract process.

Comply _____ Exception _____

3. Any contract(s) completed as a result of this bid will be a statewide contract allowing any political subdivisions, such as cities, counties, government entities, public schools and higher education, etc., to purchase from this agreement. This contract will not replace any existing contracts specifically restricted to educational institutions.

Comply _____ Exception _____

4. Respondents must be Oracle authorized direct resellers for those products requiring vendor authorization, and bids from other firms will not be considered. Vendors shall submit written proof of Oracle direct reseller authorization and cannot resell licenses purchased through a distributor or other 3rd party entity.

Comply _____ Exception _____

5. Bidders shall submit a letter from the Utah Oracle account team indicating that the vendor is currently in good standing with Oracle:

Account Mgr. Fred Trovato (801) 595-5705 fred.trovato@oracle.com, or Inside sales
Tony Loaiza (800) 542-1170 X34472. tony.loaiza@oracle.com

Comply _____ Exception _____

6. Respondents must describe their problem escalation policy for resolving ordering problems, and designate the individuals involved together with contact information. Include documentation with bid documents

Comply _____ Exception _____

7. Respondents must agree to accept responsibility for billing the purchasing agencies on an individual basis in a timely manner.

Comply _____ Exception _____

8. Respondents must demonstrate ability to assist with and/or complete Oracle license migrations. Include documentation with bid.

Comply _____ Exception _____

9. Respondents must have demonstrated ability to assist in complex license scenarios presented by the State of Utah, in order to best advise the State on licensing options. Include documentation with bid.

Comply _____ Exception _____

10. Respondents must have in-house Oracle education or the ability to provide Oracle education credits to the State at reduced costs.

Comply _____ Exception _____

11. Respondent must have the ability and willingness to consolidate and/or expedite orders for any special monthly/quarterly benefits offered to the State, which may be time or volume sensitive.

Comply _____ Exception _____

12. Respondents must have a clear understanding of Oracle order processing procedures, and must be able to process any purchases through Oracle and track ownership of licenses by the State.

Comply _____ Exception _____

13. Reseller agrees to promptly pay Oracle for payments received from the resulting contract for licenses, support and education.

Comply _____ Exception _____

Mandatory—Pricing Requirements

1. Resellers shall agree to immediately provide changes in Oracle list prices to the State Division of Purchasing upon receipt of notification from the manufacturer.

Comply _____ Exception _____

2. Special pricing promotional discounts from Oracles must be passed on to State as price reductions.

Comply _____ Exception _____

3. When Oracle decreases pricing on their products, the reseller must provide the State the same price decrease with the effective date being the same as the vendor date.

Comply _____ Exception _____

Mandatory—Delivery Requirements

1. The State desires consistent delivery of all products provided to agencies, without imposing unreasonable stocking requirements on reseller suppliers. The State desires an average delivery time not greater than 7 business days on Oracle products. It is understood that delivery times are subject to availability from Oracle and that additional time may be required for some orders.

Comply _____ Exception _____

2. Orders will be shipped FOB Destination. The State prefers FOB Destination with Freight Prepaid and that any associated shipping and handling costs be included with the total unit price (freight pre-paid). Bidders may choose to add actual shipping charges to the invoice (freight pre-paid and add).

Freight pre-paid _____ or Freight pre-pay and add _____

3. Resellers must be able to provide delivery time information from receipt of order to delivery to the requesting agency for all items.

Comply _____ Exception _____

Mandatory—Pricing Evaluation

1. Pricing for products must include all costs and manuals. All products must be new and in standard vendor packaging.

Comply _____ Exception _____

2. Pricing information and specific discount percentages must be shown separately for all offered product categories. Net pricing to the State will be based on discounts from the most current Oracle published suggested retail prices (MSRP). All pricing information must specifically indicate the discount level offered to the State.

Upon award of contract, the discount percentages will be considered a not less than figure. If awarded to multiple resellers, State agency users will be required to get quotes from the awarded reseller(s) and reseller(s) will be allowed to increase their discount at their discretion (based on order size, etc.).

Oracle Discount Percentages

Bracket 1 Orders totaling less than \$100,000 MSRP

	Government Pricing	Education (K-12) Pricing
Oracle product line software discount	_____ %	_____ %
Product/Update support discount	_____ %	_____ %
Oracle Training Materials & Courses	_____ %	_____ %

Bracket 2 Orders totaling \$100,001 to \$250,000 MSRP

	Government Pricing	Education (K-12) Pricing
Oracle product line software discount	_____ %	_____ %
Product/Update support discount	_____ %	_____ %
Oracle Training Materials & Courses	_____ %	_____ %

Oracle Professional Services and Training Rates

Post implementation professional services hourly rate: \$ _____ hour
(Include description if more than 1 rate is included)
\$ _____ hour

Training services hourly rate: \$ _____ hour
(Include description if more than 1 rate is included)
\$ _____ hour

Bid Evaluation

Respondents must answer all of the general requirements questions with an affirmative response or the requested information to be eligible for section two scoring.

The State reserves the right to be the sole judge as to the overall acceptability of any bid or to judge the individual merits of specific bid within competing offers. The State reserves the right to make awards based upon location and any mix of vendor factors deemed to be of overall benefit to the State of Utah. Price is the primary factor assuming all mandatory requirements have been met.

Bid Preparation Instructions

Respondents must organize their bid response into the following sections:

1. **BID COVER SHEETS.** Complete, sign and include with bid submittal.
2. **MANDATORY REQUIREMENTS.** This section must answer each of the mandatory requirements with an affirmative response or by providing the information requested by the requirement.
3. **MISCELLANEOUS ADDITIONAL INFORMATION AND ATTACHMENTS.** Use this section to provide information about your company including any offices or branches located in Utah.
4. **COST.** This section must respond to the price requests included in the bid. If discounts for specific product families or categories differ, the respondent should note the appropriate price to the state for each category.

Award

It should be noted that the State reserves the right to award this contract to multiple reseller's if it is determined, solely by the State, to be in the State's best interest.

The award of this contract will result in a one-year contract with four (4) options to renew for a period of one year.

The State reserves the right to award to the lowest responsive bidder(s) for Bracket 1, Bracket 2 or the combination of both. The State also reserves the right to award to Bracket 1 only.

Deadline

Two copies of the bid, in a sealed envelope, must be delivered, received, and date stamped by the Division of Purchasing no later than 2:00 P.M. on the date indicated on the bid cover sheet. Bids received after that date and time would not be accepted. Include bid number on the outside of the envelope. Bids must be delivered to:

Division of Purchasing
3150 State Office Building, Capitol Hill
Salt Lake City, Utah 84114

Questions

Written technical questions should be directed to the Division of Information Technology Services (ITS) Assistant Director, Bob Woolley, at facsimile (801) 538-3622. Written questions are due by close of business on Friday, October 25, 2002. Questions related to the procurement process should be directed to the Purchasing Agent, Glendon Mitchell, at (801) 538-3138.

Revised Contract Terms and Conditions
State of Utah, Statewide Contracts
ATTACHMENT A (Invitation for Bids)

1. AUTHORITY: Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE: The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. LAWS AND REGULATIONS: Any and all supplies, services and equipment proposed and furnished will comply fully with all applicable Federal and State laws and regulations.

4. RECORDS ADMINISTRATION: The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

5. AUDIT OF RECORDS: The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

6. CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the laws of the state of Utah to any officer or employee of the state or participating political subdivisions to secure favorable treatment with respect to being awarded this contract.

7. INDEPENDENT CONTRACTOR: Contractor will be an independent Contractor, and as such will have no authorization, express or implied to bind the State to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as expressly set forth herein. Compensation stated herein will be the total amount payable to the Contractor by the State. The Contractor will be responsible for the payment of all income tax and social security tax due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State will not be deemed to be employees or agents of the Contractor.

8. HOLD HARMLESS: The Contractor will release, protect, indemnify and hold the State and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers.

9. EQUAL OPPORTUNITY CLAUSE: The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

10. SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

11. AMENDMENTS: The terms of this contract will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing.

12. DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE.

13. CANCELLATION: Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled without cause by the State upon 60 days notice, in writing, prior to the effective date of the cancellation. Cancellation may be in whole or in part. Cancellation of the contract due to Contractor default may be immediate.

14. TAXES: Bid prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K

15. WARRANTY: The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. PARTICIPANTS: This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the bid.

17. POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

18. QUANTITY ESTIMATES: The State does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

19. DELIVERY: The prices bid will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without charge.

20. REPORTS: The Contractor will submit quarterly reports to the State Purchasing Agent showing the quantities and dollar volume of purchases by each agency and political subdivision.

21. PROMPT PAYMENT DISCOUNT: Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.

22. FIRM BID PRICES: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of bid opening.

23. PRICE GUARANTEE, ADJUSTMENTS: The contract pricing resulting from this bid will be guaranteed for the period specified. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the contract will not be effective unless approved by the State Director of Purchasing. The State will be given the immediate benefit of any decrease in the market, or allowable discount.

24. ORDERING AND INVOICING: Orders will be placed by the using agencies directly with the Contractor. All orders will be shipped promptly in accordance with the delivery guarantee. The Contractor will then promptly submit invoices to the ordering agency. The state contract number and the agency ordering number will appear on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices on file with the Division of Purchasing. The State has the right to adjust any invoice reflecting incorrect pricing.

25. PAYMENT: Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be made via a State of Utah (or political subdivision) APurchasing Card.® All payments to the Contractor will be remitted by mail unless paid by Purchasing Card.

26. MODIFICATION OR WITHDRAWAL OF BIDS: Bids may be modified or withdrawn prior to the time set for the opening of bids. After the time set for the opening of bids no bid may be modified or withdrawn.

27. BID PREPARATION COSTS: The State is not liable for any costs incurred by the bidder in bid preparation.

28. INSPECTIONS: Goods furnished under this contract will be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or not in compliance with bid specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the

circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph will adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

29. PATENTS, COPYRIGHTS, ETC.: The Contractor will release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

30. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State Director of Purchasing.

31. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend Contractor from receiving future bid solicitations.

32. FORCE MAJEURE: Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

33. HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

34. NON-COLLUSION: By signing the bid the bidder certifies that the bid submitted has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

35. PUBLIC INFORMATION: Contractor agrees that the contract will be a public document, as far as distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

36. CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions which follow, the special terms and conditions will govern.

37. WAREHOUSE AND DISTRIBUTION: The Contractor will maintain a reasonable amount of stock warehoused for immediate or emergency shipments. Shipments are to be made in the quantities as required by the various ordering agencies. Orders for less than the minimum specified amount will have transportation charges prepaid by the Contractor and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered will be shipped without charge.

Revision date: 3/14/2002